

Informal Section 7 Consultation



Objectives

- Understand Informal Consultation Process
 - Technical Assistance letters
 - Effects determinations
 - Avoidance and minimization measures
 - Requesting Service concurrence
 - Roles of Federal Action Agency/Applicant/
non-Federal representative and Service



Informal Consultation

- Section 7(a)(2) Federal agencies shall consult with the Service to insure their actions do not jeopardize the continued existence of listed species or adversely modify critical habitat.

Informal Consultation

- An optional process that includes all discussions, correspondence, etc. between the Service and the Federal Action Agency
- Assists the federal agency in determining the appropriate level of consultation
- Federal agency can go directly to formal consultation

Informal Consultation - purposes

- Identify affected species/critical habitat
- Determine potential direct and indirect effects of the action on species/critical habitat
- Help monitor aggregate effects on a species or ecosystem over time

Informal Consultation - advantages

- Can explore opportunities to benefit the species
- No mandated time requirements
- Flexible requirements to produce documents, obligate resources, or make determinations
- Allows the development of creative alternatives that may not be possible once formal consultation begins
- Less expensive
- Applicants are often required to show proof of consultation before funding/permitting by Federal agency is approved
- No take of listed species

Informal Consultation

- **Contact the Service early** (eg., before permit application submitted) for technical assistance. Find out what species may be in the project area so effects can be avoided up front.
- Contact us to request current species list (Species list can also be found on our website: www.fws.gov/midwest/reynoldsburg)

Technical Assistance Request submitted to Service

- Submit to Service:
 - Project description
 - Location indicated on map and latitude/longitude/address/county provided
 - **Description of habitat** to be impacted (esp. forest, streams, wetlands)
 - Representative photos

Example Technical Assistance Letter

Dear Dr. Knapp:

Project
location/type:

Consulting firm Z plans to submit a permit application to the Corps of Engineers for construction of a residential subdivision at 1234 Happy Rd., Columbus, Franklin County, Ohio. Latitude:
Longitude:

Habitat on-
site/proposed
impacts:

Currently the site supports 10 acres of agricultural field, and 10 acres of second growth beech/maple dominated forest, average diameter at breast height of 3 inches. In addition, 2 federal jurisdictional emergent wetlands totaling 3 acres will be filled, and 100 linear feet of ephemeral stream channel, an unnamed tributary to the Scioto River, will be culverted. See the attached map, layout drawings, and photos for additional information.

Request
for info:

This letter constitutes a request for information on federally listed threatened, endangered, or candidate species, or critical habitat within the vicinity of this project.

Technical Assistance Response from Service

- Will indicate, based on information provided, which species may occur in project area
- May recommend habitat/species surveys to document presence/likely absence of listed species
- Will be submitted within 30 days of receipt of request

Technical Assistance Response from Service

- Typically, response is based on presence of suitable habitat for listed species or known locations of listed species
- Applicant/Federal Action Agency must then determine whether or not project may affect each listed species

Example of Service response

Dear Consulting Firm X:

This is in response to your letter regarding a proposed residential development in Columbus, Ohio.

■ **ENDANGERED SPECIES COMMENTS:** The project lies within the range of the Indiana bat, a federally-listed endangered species. Summer habitat requirements for the species are not well defined but the following are considered important:

1. Dead or live trees and snags with peeling or exfoliating bark, split tree trunk and/or branches, or cavities, which may be used as maternity roost areas.
2. Live trees (such as shagbark hickory and oaks) which have exfoliating bark.
3. Stream corridors, riparian areas, and upland woodlots which provide forage sites.

Should the proposed site contain trees or associated habitats exhibiting any of the characteristics listed above, we recommend that the habitat and surrounding trees be saved wherever possible. If the trees must be cut, further coordination with this office is requested to determine if surveys are warranted. Any survey should be designed and conducted in coordination with the Endangered Species Coordinator for this office.

Species:

Guidelines
for
species:

Effects Determination

- *No Effect* - The appropriate conclusion when the action agency determines its proposed action will not affect listed species or Critical Habitat
- *May Affect* – The appropriate conclusion when the proposed action will have **any** effect on listed species or Critical Habitat. Affects may be direct, indirect, and/or beneficial

No effect determination

- No species/suitable habitat/critical habitat present, or, if present, will not be impacted by project
- Does **not** require concurrence of Service
- Once no effect determination is made, project may proceed without further consultation

May affect determination

- Appropriate when project will impact known locations of listed species and/or suitable habitat for listed species
- Requires Section 7 consultation with Service

Types of may affect determinations

- *May affect, not likely to adversely affect*
 - Effects are discountable, insignificant or beneficial
 - “Take” will not occur
 - Informal Consultation is sufficient
- *May affect, likely to adversely affect*
 - Direct and/or indirect effects will result in incidental “take”
 - Formal Consultation is required

Informal consultation

- Insignificant—can not meaningfully measure, detect, or evaluate effects
- Discountable-extremely unlikely to occur
- Beneficial-positive effects without any adverse effects (not a “net benefit”)

Not likely to adversely affect

- Determination often based on implementation of avoidance and/or minimization measures such as:
 - Seasonal restrictions
 - Avoiding impacts to habitat for listed species
 - Habitat and/or species surveys
 - Must be tailored to species biology

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- Applicant/Federal Agency submits to Service an effects **determination, and rationale, including any avoidance and minimization measures** to protect the species
- Applicant requests Service's concurrence

Example determination letter

Dear Dr. Knapp:

This is in reference to X project.

Determination:

We have determined that the X project is not likely to adversely affect the clubshell mussel, based on the following avoidance and minimization measures that will be implemented on this project:

Rationale and avoidance/minimization:

All instream work will occur during the low-flow period; all instream and riparian work will be limited to the minimum footprint possible; erosion control measures detailed in the attached plans will be incorporated into the project design to limit sedimentation; post-construction, the riparian area will be reseeded with native riparian vegetation; and an environmental inspector will be onsite at all times to ensure compliance with all environmental obligations.

Concurrence request:

We request your concurrence with our determination.

Informal Consultation (cont.)

- Service will provide written concurrence, or statement of non-concurrence via letter or e-mail, usually within 30 working days
- If the project is changed or the permit amended, then you need to talk with the Service again
- Information is valid for a period of 90 days

Example of Concurrence Letter

Dear Consultant X:

The Service has reviewed the avoidance and minimization measures proposed to protect the clubshell mussel for the proposed Project Z. Based on these measures, the Service concurs with your determination that the project is not likely to adversely affect the clubshell mussel.

This concludes consultation on this action as required by section 7(a)(2) of the Endangered Species Act. Should, during the term of this action, additional information on listed or proposed species or their critical habitat become available, or if new information reveals effects of the action that were not previously considered, consultation with the Service should be reinitiated to assess whether the determinations are still valid.

Statement of
concurrence or
non-
concurrence
justified:

Caveat to
conclusion of
consultation:

Formal Consultation

- Required when a Federal action “is likely to adversely affect” a listed species or Critical Habitat
- Usually preceded by informal consultation, but despite implementation of avoidance and minimization measures, take cannot be avoided

Candidate Species



- Plant and animal taxa for which the Service has enough scientific information to support proposing them for listing under the Endangered Species Act

Candidate Species

- Candidate species are therefore not legally protected under the ESA
- However “your proactive efforts to conserve this species now may help avoid the need to list the species under the Endangered Species Act in the future.”
- Service provides guidelines for these species in response letters

Critical Habitat



Constituent elements of critical habitat:
biological and physical attributes that
are essential to the species'
conservation, such as: space, food,
water and nutrition; cover or shelter;
reproduction; and special habitats

* Applies only to those areas
designated as critical habitat listed in
50 CFR Part 17 or 226

Critical Habitat and Adverse Modification

- Direct and/or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a species
- If determination is adverse modification, then formal consultation is required

Take Home Messages



- **Coordinate early** to avoid later project delays due to listed species issues
- If you can avoid impacts, **AVOID!**
- If you cannot avoid, **MINIMIZE!**
- Formal Consultation should be last resort, because listed species will be adversely affected, and additional time and effort will be required to complete formal consultation process